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18 **UNITED STATES DISTRICT COURT**

19

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

21 CISCO SYSTEMS, INC.,
22 Plaintiff,
23 vs.
24 ARISTA NETWORKS, INC.,
25 Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF MATTHEW D.
CANNON IN SUPPORT OF ARISTA'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

DEMAND FOR JURY TRIAL

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DECLARATION OF MATTHEW D. CANNON

I, Matthew D. Cannon, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

8 2. I make this declaration in support of Defendant Arista’s Administrative Motion to
9 File Allegedly Protected Material Under Seal Pursuant to Local Rule 79.5(e), Dkt. 162 (“Sealing
10 Motion”) in connection with Arista Networks, Inc.’s (“Arista’s”) Motion for Leave to Amend
11 Response to Add Counterclaims (“Arista’s Brief” or “Brief”). I make this declaration in
12 accordance with Civil Local Rule 79-5(e) on behalf of Cisco to attest that the majority of the
13 information contained in the documents referenced in the Sealing Motion should be sealed.

14 3. Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the
15 document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to
16 protection under the law”(*i.e.*, is “sealable”). Civil L.R. 79-5(b). The sealing request must also
17 “be narrowly tailored to seek sealing only of sealable material.” *Id.* Generally, materials related
18 to non-dispositive motions may be sealed so long as the party seeking sealing makes a
19 “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure
20 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting
21 *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). For
22 pleadings attached to a non-dispositive motion, however, this Court has held that the party seeking
23 sealing must provide “compelling reasons” to justify sealing. *See Delphix Corp. v. Actifio, Inc.*,
24 No. 13-cv-04613-BLF, 2014 WL 415520, at *1 (N.D. Cal. Aug. 20, 2014). “Compelling reasons”
25 exist to seal information that, if disclosed, would damage a party’s ability to compete in the
26 marketplace. *See In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008).

27 4. Cisco's review and assessment of Arista's sealing proposals have been complicated
28 by the volume of missing and/or incorrect citations contained in Arista's Brief and supporting

1 papers. For example, Arista's Brief does not include citations for any of the passages that Arista
 2 proposes sealing. Nevertheless, Cisco has endeavored to identify the information Arista cited and
 3 respond accordingly, but has been unable to ascertain the source of some of that information.
 4 Cisco reserves the right to revisit its analysis in the event that Arista clarifies the citations in its
 5 Brief.

6 5. Many passages in its Brief and Exhibit 1 that Arista proposes for sealing should not
 7 be sealed. Cisco is not asking the Court to seal passages of Arista's Brief or Exhibit 1 that reflect
 8 Arista's attorney argument, rather than statements or information that are actually contained in
 9 Cisco's documents. Additionally, some passages that need not be sealed include citations to
 10 exhibits that Cisco has de-designated under the protective order. And one passage even appears to
 11 cite Arista information.

12 6. But while Arista's Motion to Seal is over-inclusive, some narrowly-tailored
 13 redactions to Arista's Brief, Exhibit 1 thereto, and certain of the Exhibits to Arista's proposed
 14 counterclaims are appropriate. Some of the documents that Arista discusses in and attaches to its
 15 Brief and Exhibit 1 contain confidential information regarding Cisco's operations to which
 16 Cisco's competitors are not entitled unfettered access.

17 7. Pursuant to Civil Local Rule 79-5(e), Cisco identifies those portions of Arista's
 18 filings that it believes should and should not be sealed in the table below:

Document	Portion(s)	Seal?	Justification
Arista's Brief	p. 1 ln. 10-11	Seal	Apparently quotes CSI-CLI-01335895. See paragraph 8 below.
	p. 1 ln. 12-14	Seal	Quotes Exhibit A. See paragraph 11 below.
	p. 2 ln. 11-12	Seal	Quotes Exhibit A. See paragraph 11 below.
	p. 2 ln. 13-14	Seal	Quotes Exhibit A. See paragraph 11 below.
	p. 2 ln. 19-20 ("internally, Cisco ... relevant market")	Do not seal	Arista attorney argument.
Exhibit 1 (Arista's Response to Cisco's Second Amended Complaint; Arista's	p. 13 ln. 12 ("Cisco knows what is at stake.")	Do not seal	Arista attorney argument.
	p. 13 ln. 12-14	Seal	Apparently quotes CSI-CLI-01335895. See paragraph 8 below.
	p. 13 ln. 15-16	Seal	Quotes Exhibit A. See paragraph 11 below.

Document	Portion(s)	Seal?	Justification
Counterclaims for Antitrust and Unfair Competition)	p. 16 ln. 18 ("Cisco's own . . . to Cisco.")	Do not seal	Arista attorney argument.
	p. 16 ln. 18-21	Seal	Apparently quotes Exhibit C. See paragraph 13 below.
	p. 16 ln. 21-23 ("As one . . . treads nearby.")	Do not seal	Quotes Exhibit B. See paragraph 12 below.
	p. 17 at ln. 9-11	Seal	Quotes Exhibit C. See paragraph 13 below.
	p. 17 ln. 11-12 ("That strategy . . . in 2014.")	Do not seal	Arista attorney argument.
	p. 18 ln. 9-10	Seal	Cites unidentified Cisco documents. See paragraph 10 below.
	p. 18 ln. 15-17 ("As Cisco's . . . into scripts.")	Do not seal	Quotes Exhibit D. See paragraph 14 below.
	p. 18 ln. 18 ("This was no accident.")	Do not seal	Arista attorney argument.
	p. 19 ln. 10 ("Cisco knew that its")	Do not seal	Arista attorney argument.
	p. 19 ln. 12-14	Seal	Apparently quotes Exhibit F. See 16 paragraph below.
	p. 19 ln. 14-17 ("And Cisco . . . Cisco environments.")	Do not seal	Quotes Exhibit E. See paragraph 15 below.
	p. 19 ln. 17-18	Seal	Quotes Exhibit F. See paragraph 16 below.
	p. 19 ln. 19 ("those")	Do not seal	Arista attorney argument.
	p. 21 ln. 4 ("barrier to entry")	Do not seal	Arista attorney argument.
	p. 21 ln. 23-24	Seal	Apparently quotes Exhibit F. See paragraph 16 below.
	p. 22 ln. 3-5	Seal	Apparently quotes Exhibit A. See paragraph 11 below.
	p. 22 ln. 5 ("Below is . . . is aware.")	Do not seal	Arista attorney argument.
	p. 29 ln. 18-23	Do not seal	Arista attorney argument and quotations from Exhibit D. See paragraph 14 below.
	p. 30 ln. 2	Seal	Apparently quotes Exhibit A. See paragraph 11 below.
	p. 31 ln. 19-20	Seal	Cites unidentified Cisco documents. See paragraph 10 below.
	p. 32 ln. 3-5	Seal	Quotes Exhibit G. See paragraph 17 below.
	p. 34 ln.11 ("Cisco was . . . rival firms.")	Do not seal	Arista attorney argument.
	p. 34 ln. 11-13	Seal	Apparently quotes CSI-CLI-01133437. See paragraph 9 below.
	p. 34 ln. 13-14 ("Arista was also knew")	Do not seal	Arista attorney argument.

Document	Portion(s)	Seal?	Justification
	p. 34 ln. 14-15	Seal	Quotes Exhibit H. See paragraph 18 below.
	p. 34 ln. 16-18 ("Cisco also . . . engineering awareness.")	Do not seal	Apparently quotes Arista public documents.
	p. 34 ln. 19-20 ("Not only . . . industry-standard CLL.")	Do not seal	Arista attorney argument.
	p. 35 ln. 7 ("as Cisco knew")	Do not seal	Arista attorney argument.
	p. 35 ln. 23 ("Not only . . . show that")	Do not seal	Arista attorney argument.
	p. 38 ln. 2-3 ("Cisco's internal . . . its conduct")	Do not seal	Arista attorney argument.
	p. 39 ln. 28 to p. 40 ln. 1 ("It explicitly . . . company documents.")	Do not seal	Arista attorney argument.
	p. 43 ln. 16-17	Seal	Apparently quotes CSI-CLI-01335895. See paragraph 8 below.
	p. 43 ln. 24 ("as Cisco . . . its documents")	Do not seal	Arista attorney argument.
	p. 44 ln. 18 ("huge investment . . . described it")	Do not seal	Apparently quotes Exhibit D. See paragraph 14 below.
	p. 46 ln. 9-11	Seal	Quotes Exhibit F. See paragraph 16 below.
	p. 46 ln. 13 ("those barriers to entry")	Do not seal	Arista attorney argument.
	p. 47 ln. 3-5	Seal	Quotes Exhibit A. See paragraph 11 below.
	p. 48 ln. 3-4 ("As one . . . treads nearby")	Do not seal	Quotes Exhibit B. See paragraph 12 below.
	p. 48 ln. 27-28	Seal	Apparently quotes Exhibit A. See paragraph 11 below.
	p. 49 ln. 22 ("As Cisco knew")	Do not seal	Arista attorney argument.
Exhibit A to Arista's Counterclaims ("Exhibit A")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 11 below.
Exhibit B to Arista's Counterclaims ("Exhibit B")	Personal e-mail addresses	Seal	Personal privacy.
	All other content	Do not seal	Non-confidential personal communication. See paragraph 12 below.
Exhibit C to Arista's Counterclaims ("Exhibit C")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 13 below.
Exhibit D to Arista's Counterclaims ("Exhibit D")	Entire	Do not seal	Public document. See paragraph 14 below.

Document	Portion(s)	Seal?	Justification
Exhibit E to Arista's Counterclaims ("Exhibit E")	Entire	Do not seal	Public document. See paragraph 15 below.
Exhibit F to Arista's Counterclaims ("Exhibit F")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 16 below.
Exhibit G to Arista's Counterclaims ("Exhibit G")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 17 below.
Exhibit H to Arista's Counterclaims ("Exhibit H")	Entire	Seal	Confidential and commercially sensitive Cisco information. See paragraph 18 below.

8. Several of Arista's proposed redactions appear to be based on quotations from a document produced by Cisco in this case beginning with Bates number CSI-CLI-01335895. This document describes Cisco's assessment of the marketplace, its product development and marketing plans, and its predictions for how the marketplace will evolve—all of which is confidential information that Cisco's competitors could use in attempts to damage Cisco's ability to compete in the marketplace. The passages quoting from this document should therefore be sealed.

9. One of Arista's proposed redactions appears to be based on quotations produced by Cisco in this case beginning with Bates number CSI-CLI-01133437. This document, including the passages quoted in Exhibit 1, contains a discussion among Cisco engineers regarding the merits of Cisco's products. Disclosure of this information would "harm [Cisco's] competitive standing," because competitors could exploit such information in their own product development and/or marketing plans. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

10. Some of Arista's proposed redactions refer to documents that Cisco has designated as confidential under the Protective Order, but which Arista does not quote or specifically identify, and which documents Cisco has not been able to identify. *See Exhibit 1 at p. 18 ln. 9-10; p. 31 ln. 19-20.* Cisco asks that these passages be sealed provisionally, pending clarification by Arista of the Cisco information to which these passages refer.

1 11. Exhibit A is a copy of an internal Cisco business communication produced by
 2 Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential
 3 Business Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at
 4 6 fn. 1, this document is deemed to have been produced in this case as “Highly Confidential –
 5 Attorneys’ Eyes Only Information.” Exhibit A is an internal email thread that contains Cisco’s
 6 confidential business information regarding, *inter alia*, Cisco’s assessment of the marketplace and
 7 its strategies for marketing its products within the marketplace. Maintaining this information as
 8 confidential provides Cisco with an “opportunity to obtain an advantage over competitors”
 9 because its public disclosure would provide competitors with a roadmap to Cisco’s marketing
 10 strategies within various market segments. *See Elec. Arts*, 298 F. App’x at 569. Cisco therefore
 11 requests that Exhibit A, and related passages in Arista’s briefing, be sealed.

12 12. Exhibit B is a personal communication between a Cisco employee and a departing
 13 colleague. Cisco has de-designated this document under the protective order in this case and does
 14 not seek sealing of it, except for the personal email addresses of the individuals who are
 15 corresponding. A version of this exhibit with those personal email addresses redacted is attached
 16 hereto as Proposed Redacted Exhibit B. Cisco does not seek sealing of any passages in Arista’s
 17 briefing that quote or discuss Exhibit B.

18 13. Exhibit C is a copy of an internal Cisco business communication produced by
 19 Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential
 20 Business Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at
 21 6 fn. 1, this document is deemed to have been produced in this case as “Highly Confidential –
 22 Attorneys’ Eyes Only Information.” Exhibit C comprises Cisco’s confidential business
 23 information regarding, *inter alia*, its product development plans, marketing strategies, and market
 24 assessment. Disclosing this information to Cisco’s competitors would harm Cisco’s business by
 25 tipping Cisco’s competitors off as to Cisco’s future operations plans, affording those competitors
 26 an unfair opportunity to pre-empt Cisco’s efforts. This would “harm [Cisco’s] competitive
 27 standing.” *Nixon*, 435 U.S. at 598. Cisco therefore requests that Exhibit C, and related passages
 28 in Arista’s briefing, be sealed.

1 14. Exhibit D is a public document. Cisco has de-designated this document under the
 2 protective order in this case and does not seek sealing of it. A revised version of the document,
 3 which omits any confidentiality legend, is attached hereto as Revised Exhibit D. Cisco does not
 4 seek sealing of any passages in Arista's briefing that discuss Exhibit D.

5 15. Exhibit E is a public document. Cisco has de-designated this document under the
 6 protective order in this case and does not seek sealing of it. A revised version of the document,
 7 which omits any confidentiality legend, is attached hereto as Revised Exhibit E. Cisco does not
 8 seek sealing of any passages in Arista's briefing that discuss Exhibit E.

9 16. Exhibit F is a copy of excerpts from an internal Cisco business communication
 10 produced by Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as
 11 "Confidential Business Information." Under the Stipulated Protective Order governing this
 12 litigation, Dkt. 53 at 6 fn. 1, this document is deemed to have been produced in this case as
 13 "Highly Confidential – Attorneys' Eyes Only Information." Exhibit F comprises Cisco's
 14 confidential business information regarding, *inter alia*, Cisco's product marketing, including
 15 features that differentiate Cisco's products from those of its competitors. Disclosure of this
 16 information would "harm [Cisco's] competitive standing" by giving Cisco's competitors access to
 17 Cisco's confidential marketing and product plans. *See Nixon*, 435 U.S. at 598. Exhibit F, and the
 18 passages of Arista's briefing that quote from it, should therefore be sealed.

19 17. Exhibit G is a copy of an internal Cisco business communication produced by
 20 Cisco in this litigation and designated "Highly Confidential – Attorneys' Eyes Only Information."
 21 under the Stipulated Protective Order governing this litigation, Dkt. 53. Exhibit G comprises
 22 Cisco's confidential business information regarding, *inter alia*, its product development plans
 23 relating to enhancements for Cisco's IOS software. The specific slide contained in Exhibit G
 24 appears to depict one portion of an internal analysis of Cisco's product development. Maintaining
 25 this information as confidential provides Cisco with an "opportunity to obtain an advantage over
 26 competitors" by preserving Cisco's ability to continue developing its products without fear that
 27 competitors will attempt to capitalize on Cisco's assessment of its product development needs.

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1 *See Elec. Arts*, 298 F. App'x at 569. Cisco therefore requests that the Court seal Exhibit G and
2 related passages in Arista's briefing.

3 18. Exhibit H is a copy of an internal Cisco business communication produced by
4 Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as "Confidential
5 Business Information." Under the Stipulated Protective Order governing this litigation, Dkt. 53 at
6 fn. 1, this document is deemed to have been produced in this case as "Highly Confidential –
7 Attorneys' Eyes Only Information." Exhibit H comprises Cisco's confidential business
8 information regarding, *inter alia*, its internal assessment of Arista's products and Arista's product
9 development strategy. Disclosing this information to Cisco's competitors would harm Cisco's
10 business by identifying to competitors Cisco's assessment of the relative strengths and weaknesses
11 of products in the market, which competitors could exploit in their own product development or
12 marketing plans. As a result, Cisco requests that Exhibit H and passages that quote it should be
13 sealed.

14 19. For the sake of clarity, Cisco has appended a Proposed Redacted Brief that reflects
15 the redactions to Arista's Brief that Cisco respectfully requests the Court approve. Cisco similarly
16 has attached proposed redacted versions of Exhibit 1 and Exhibit B, and revised versions of
17 Exhibits D and E.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed in San Francisco, California,
3 on January 29, 2016.

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/s/ Matthew D. Cannon

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Matthew D. Cannon (Bar No. 252666)

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